

COUNTY OF KAUAI
Minutes of Meeting
Open Session

Board/Committee:	LIQUOR CONTROL COMMISSION	Meeting Date	December 7, 2017
Location	Mo'ikeha Building, Meeting Room #3	Start of Meeting: 4:00 p.m.	End of Meeting: 5:45 p.m.
Present	Vice Chair William Gibson; Members: Paul Endo, Gerald Matsunaga, and Gary Pacheco Also: Liquor Control Staff: Director Gerald Rapozo, Private Secretary Cherisse Zaima; County Attorney Mauna Kea Trask		
Excused	Chair Jean Iida; Shirley Akita; Maryanne Kusaka		
Absent			

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SUBJECT	DISCUSSION	ACTION
Call To Order		Vice Chair Gibson called the meeting to order at 4:00 p.m. with 4 members present, constituting a quorum.
Roll Call	Director Rapozo called roll, noting 4 members were present.	
Approval of the Agenda		Mr. Pacheco moved to approve the agenda. Mr. Endo seconded the motion. Motion carried 4:0.
Public Hearing	<p>(a) <u>RUTH'S CHRIS STEAK HOUSE</u>: Application No. 2018-048 was filed on November 9, 2017 by RCSH Operations, Inc. dba Ruth's Chris Steak House for transfer of Restaurant General License No. 2G-077 from Kauai Steak House, LLC dba Ruth's Chris Steak House to RCSH Operations, Inc. dba Ruth's Chris Steak House located at 2829 Ala Kalanikaumaka Street, Kōloa, Kauai, Hawaii.</p> <p>Up until the time of the hearing, the Department did not receive any letters in support or opposition of the application.</p>	

	<p>Mr. Newton Chu, attorney and authorized agent was present on behalf of the applicant.</p> <p>In response to the Commission, Mr. Chu explained that this transfer is part of a Statewide acquisition of all Ruth’s Chris locations in Hawaii.</p> <p>The public hearing for Application No. 2018-048 was closed.</p>	<p>Mr. Matsunaga moved to approve Application No. 2018-048. Mr. Endo seconded the motion. Motion carried 4:0.</p>
	<p>(b) <u>KAUAI PASTA WEST</u>: Application No. 2018-046 was filed on September 14, 2017 by Kauai Pasta Līhu‘e Corp. dba Kauai Pasta West for a New Restaurant General (live entertainment and dancing) Liquor license at 2-118 Kaumuali‘i Highway, ‘Ele‘ele, Kauai, Hawaii.</p> <p>Up until the time of the hearing the Department did not receive any letters in support or opposition of the application.</p> <p>Mr. Russell Stokes, owner, was present.</p> <p>Commissioner Matsunaga asked whether the Kauai Pasta located in Līhu‘e across from McDonald’s is also owned by Kauai Pasta Līhu‘e Corp. to which Mr. Stokes replied yes; the location in Kapaa was sold and falls under different ownership.</p> <p>Commissioner Endo noted the application include live entertainment, and asked what type of entertainment is planned. Mr. Stokes stated he currently does not have any kind of entertainment planned, but included that in order to keep the option open should they have special events, or for special occasions. Mr. Stokes stated he has held the liquor license he has in Līhu‘e, which allows for live entertainment, for several years, but has never had any entertainment there yet.</p>	<p>Mr. Matsunaga moved to approve Application No. 2018-046. Mr. Pacheco seconded the</p>

	The public hearing for Application No. 2018-046 was closed.	motion. Motion carried 4:0.
Continuance of Public Hearing	<p><u>KAUAI DISTILLING COMPANY</u>: The hearing for Application No. 2018-027 filed on August 15, 2017 by LBD Coffee, LLC dba Kauai Distilling Company for a New Manufacturer Other Specified Liquor license located at 5907 C Kawaihau Road, Kapaa, Kauai, Hawaii was opened on November 2, 2017 and continued to December 7, 2017 at 4:00 p.m. or shortly thereafter in Meeting Room #3 of the Līhu‘e Civic Center, Mo‘ikeha Building, 4444 Rice Street, Līhu‘e, Kauai, Hawaii.</p> <p>Up until the time of the hearing, the Department received 1 letter in opposition to the Application.</p> <p>Commissioner Matsunaga noted for the record that he was not present at the November 2, 2017 hearing when this application initially came before the Commission. However, he obtained a copy of the audio recording of the meeting, and has reviewed the entire proceedings that occurred both in the open and executive sessions. Therefore, he is prepared to participate in today’s hearing.</p> <p>County Attorney Mauna Kea Trask noted for the record that Deputy County Attorney Courson, who was staffing the hearing for this application, and who regularly staffs the Liquor Commission meetings, had recently learned that his family member, and a family friend may have a potential business relationship with the applicant. After consulting with County Attorney Trask, and Liquor Control Director Rapozo, Attorney Courson chose to remove himself from further proceedings regarding this application to avoid any appearance of impropriety.</p> <p>Attorney Trask also stated for the record that he has no relationship with the applicant, nor anyone present at the hearing today. He has reviewed both the open and executive session minutes of the November 2, 2017 hearing,</p>	

	<p>and has reviewed the application and applicable laws in HRS 281; he will be staffing the hearing today.</p> <p>Attorney Trask stated that, per the Chair’s discretion under Chapter 91, everyone present today will be allowed to testify, and will be limited to a time period of 3 minutes. Time will be tracked, and 1-minute and 30-second reminders will be given. Upon the conclusion of the 3 minutes, testifiers will be asked to conclude and be seated.</p> <p>Attorney Trask stated he was made aware that at the last hearing, there was discussion regarding a lawsuit being filed by the applicant against the County, and the fairness of the County in hearing the decision today was called into question. Attorney Trask clarified that there is currently a declaratory action between the applicant and the County at the Circuit Court, although no damages are being sought in that case; the applicant is not suing the County for any money. The applicant is seeking interpretation of the Kauai County code and State law regarding zoning. Attorney Trask is not assigned to that case, and noted this application before the Liquor Commission is an entirely different application; Attorney Courson and Attorney Trask have no involvement in that Circuit Court case, which is land use Planning matter. This application deals with liquor under the authority of the Liquor Commission, and because HRS 281 has its own timelines and legal necessities that must be complied with, this cannot be stalled pending the outcome of the declaratory action.</p> <p>Attorney Trask stated that it is appropriate to proceed today, and the opinion of the County Attorney’s Office is that there is no conflict in that regard.</p> <p>Mr. Tai Erum, General Manager, was present along with Mr. Jacob Delaplane, attorney on behalf of the applicant.</p> <p>The Commission opened the floor for public testimony.</p>	
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The Commission received testimony from Muriel Morgan in opposition. Ms. Morgan stated that her testimony will be longer than 3 minutes, and requested that she be allowed to have the 3 minutes of her husband, who was present at the hearing, in addition to her own. Chair Gibson asked whether the testimony will be the same as the testimony she presented at the last meeting to which Ms. Morgan replied no. Chair Gibson granted Ms. Morgan a total of 6 minutes.

Ms. Morgan thanked the Commission, and noted the addresses of the properties she owns for the record: 5906, 5910, 5898, and 5898A Kawaihau Road, which is directly across the street from this lot.

Ms. Morgan noted the serious concerns she has, particularly the health of her family and community. She referenced a letter she received from Les Drent, owner of LBD Coffee, on November 23, which outlines their operation, what they grow, and their intent to centralize their small, family-owned business to this property, which has an Agriculture zoning. Ms. Morgan stated Mr. Drent's letter did not specify what will be relocated to this property, but surmised that it would most likely be for coffee and cigar production, as well as warehousing, fermenting, and curing. That alone will have an impact on the air they breathe; the coffee roasting will have both smoke and smell. Ms. Morgan stated when she spoke with Mr. Drent's representative about the dust, she was told they were within their limits, and she feels they were unwilling to come to a compromise until she sent them the fugitive dust law. Ms. Morgan explained that her 2 year old granddaughter has existing respiratory problems, which is made worse by the dust, and is her main concern with the issuing of this liquor license.

Ms. Morgan stated that Mr. Drent's letter left out the gristmill process that she says releases a very fine dust into the air, which is extremely flammable and could explode at the smallest of ignitions. Because of the need for

	<p>ventilation, the dust will have to be released from the building to ensure the safety of employees and visitors inside. She pointed out that Mr. Drent has a home 2 miles up the road on 2 acres of land as well as a piece of land on a 30-year lease with the State, which is 4.11 acres, at the end of Kawaihau Road/Kahuna Road. She questioned why he does not put the distillery there since it is much more rural and has less houses nearby. She also noted acreage he has in Waimea in a less residential area. Ms. Morgan noted that Mr. Drent's newsletter states the acquisition of property at 5097C consists of 27 acres, of which she, with the help of the tax office, could verify 11; she questions what the remaining 15 acres is for, but commented that if it corn, that equates to quite a bit of processing in a residential area. She stated that the applicant is only supposed to be processing what is being grown on the subject property.</p> <p>Ms. Morgan stated she is unsure whether the corn he will be growing is organic or GMO, but either way, she does not want the dust or waste that will be generated, and is also concerned about the fermentation process, which will produce extra large amounts of carbon dioxide. Between the coffee, tobacco, chocolate, honey, and now a distillery, she feels her grandchildren do not have a chance of having clean air, nor will any of the neighbors. She questioned where the vapors from the still will go, noting explosion safety issues due to build of vapors should they be contained within the distillery. Vapors and smells will be released and will travel quite a ways, which she feels will invite black mold in her homes. Ms. Morgan questioned how the applicant defines the "business hours" he states he will be operating under. Ms. Morgan provided a picture of the dust she says was taken of the property directly across from her house from the viewpoint of her yard. She commented that she had to complain 4 times before the applicant did anything to do something about the dust.</p> <p>Ms. Morgan expressed concern about the limited water supply, and stated that should the vapors ignite, they would have limited time to respond. Ms.</p>	
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	<p>Morgan stated that there will be a warehouse full of barrels of alcohol, noting that just 1 acre of corn will produce 7 barrels of alcohol. She questioned how many barrels of alcohol could be produced and subsequently stored in the warehouse across the street.</p> <p>Ms. Morgan concluded by stating she is concerned that this operation will change the fabric of her neighborhood both physically and socially, and stated that this distillery does not belong in a residential neighborhood, but rather in an industrial area. There are too many hazards related to distilling, and while she realized the Liquor Commission has no purview over Planning Department issues, she pointed out that they do work side by side, for the people. She feels that approving this liquor license will give the applicant ammunition against the Planning Department who she feels is trying to do the right thing for the community. She also stated she understands that the license will not be issued until the applicant has met the Planning Department's requirements, and questioned why then, would this application even be approved, especially considering it may be quite a while before Planning moves forward. She asked that this be put on hold until then.</p> <p>Commissioner Gibson asked whether Ms. Morgan had a meeting with the applicant to which Ms. Morgan stated no, explaining that she was sent a letter asking whether there were concerns. She stated that she asked the applicant to please let her know when he finalized any plans for a meeting as she would like to be there, but she has not heard from him since.</p> <p>The Commission received testimony from Jerry Driscoll, in opposition, who resides at 5927 Kawaihau Road. Mr. Driscoll distributed a map with a 500' radius along with a list of petitioners he says is within 500' of the proposed distillery. Mr. Driscoll referenced Hawaii Revised Statutes Section 281-39.5, which states that if 40% of the residents oppose the application, the Liquor Commission is required to deny the application. He stated that he</p>	
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	<p>has identified 73 houses, of which 50 residents are opposed, which calculates the amount to approximately 70%. He noted that the petition speaks for itself that the residents do not want this distillery. He asked if he could pose a question to the attorney, to which Attorney Trask declined.</p> <p>Director Rapozo stated for clarification that the HRS Section 281-39.5 that Mr. Driscoll cited relates to licenses classified as on-premises establishments. Because this application is for a Manufacturer class license, the correct statute in relation to that class of license is HRS 281-59, which requires 50% opposition from registered voters or property owners within 500'.</p> <p>The Commission received testimony from Linda Driscoll, in opposition, who resides at 5927 Kawaihau Road. Ms. Driscoll stated they bought their property specifically because it has over 400 trees on it, noting her lungs are currently at 56%. Should there be a distillery across the street that emits carbon dioxide, it is contrary to why they purchased their property. Ms. Driscoll stated that she was told by someone who visited a Jack Daniels distillery that they could smell it 3 miles out of town.</p> <p>Ms. Driscoll questioned that if the applicant says he is within his rights, why does he have 2 lawsuits against the County. She mentioned the employees' claims that this will be a small operation that will run only 2 days a week, 2 months out of the year during normal business hours, which she equates to approximately 16 days a year. She commented that with millions of dollars of equipment investment, that is not a very good return. Ms. Driscoll commented that everything starts off small, but questioned whether they will stay small, noting that their infrastructure allows for much more than just 16 days worth of product. Ms. Driscoll explained that the column still they will be using was built in the 1800's to run 24/7 for continuous revenue, it is noisy, and the fermenting process can be up to 72 hours which will generate a bad smell. She expressed concern that property values will</p>	
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	<p>decrease, and distilleries will be promoted should this be approved. She worries about the health of her neighbors, especially the elderly, noting there is a rest home, a nursery school, and elementary school, and a high school just outside the 500' radius, which she feels should be considered.</p> <p>The Commission received testimony from Abraham Makanui, in opposition, who resides in Anahola. Mr. Makanui stated he is a 50 year resident of this island, and his family has been here for generations. He is completely opposed and feels the applicants should be ashamed of themselves for trying to put a distillery right in the middle of a residential neighborhood, knowing the by-products that will result from it, as well as the flammability, and also adding to the already congested traffic situation in Kapaa. He commented that LBD Coffee has the largest land base on the back side of the island, and suggested they do it out there in the middle of nowhere where it will not affect anyone. Mr. Makanui stated they do not need a traffic increase in Kapaa, which already takes an hour just to get through town. He added that Kawaihau is an even smaller area made up of condensed housing where children reside. He expressed his anger at the applicant's attempt to sue the County to change the zoning in that neighborhood is a big, red flag. He described this as capitalism, expressing his strong opposition, and his sympathy for the residents who will have to live with this in their neighborhood.</p> <p>Attorney Mauna Kea Trask stated for clarification that the County is not being sued to change any zoning, further explaining that a declaratory action is a legal question set before the Circuit Court regarding interpretation of existing law.</p> <p>The Commission received testimony from Ms. Nelly Bunao, in opposition, who resides at 5923 Kawaihau Road, Unit D. Ms. Bunao referenced the letter from the applicant that states they plan to centralize their small family-owned operation to the agriculturally zoned property at 5907C Kawaihau</p>	
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	<p>Road to reduce out carbon footprint. She questioned how they reduce their carbon footprint when you stick it in the middle of a residential area. She and her family are opposed to it, noting it will create noise, odors, mold, waste, and health problems. She mentioned that the applicant has not invited the community to any informational meetings for question and answer sessions as was suggested they do. Instead the residents were given a phone number to call, which she feels was not acceptable. Ms. Bunao questioned why an environmental impact study has not been done to find out what the effects to the environment would be in their small community.</p> <p>The Commission received testimony from Elaine Valois, in opposition. Ms. Valois stated that the fact that 71% of the neighborhood are opposed to this ought to be enough. The fact that the owner does not want it in his yard for the same reasons the residents don't want it in theirs ought to be enough. The industrialization of Kawaihau Road, and the worsening traffic situation ought to be enough to take into consideration that this is not the right place for a factory. There are other commercial establishments on Kawaihau and that ought to be enough; however, none of those are environmentally offensive; they are inert. This distillery is not, it is truly volatile, which must be considered. The fact that their homes will be compromised ought to be enough.</p> <p>The Commission received testimony from Mr. Les Gale, in opposition, who resides at 5956B Kawaihau Road. Mr. Gale questioned whether Mr. Drent was present, and proceeded to question members of the audience. Attorney Trask interjected and stated for the record that neither Mr. Gale, nor anyone else will address anyone in the room except the Commission. Mr. Gale apologized, but continued to question why the owner was not present to which Attorney Trask explained that the applicant is a corporate entity, and under the laws of the State of Hawaii, a corporation can apply for this type of license. Attorney Trask addressed the members of the public, stating that this is obviously an important issue for everyone, and the Commission does</p>	
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	<p>acknowledge and understand that. However, in order to maintain order and decorum, and to ensure the record is clear, and to ensure this does not devolve into anything inappropriate, he asked that testimony be directed to the commissioners, and leave any private parties out of it.</p> <p>Mr. Gale stated he grew up around people with stills, and it is not a smell anyone wants in their yard. He stated that the process of making chocolate and alcohol creates carbon dioxide, which will kill you. He stated that anything over 3% in the breathable air will make a person sick, and anything more than that will kill you. Other than that, it is just not Pono.</p> <p>The Commission received testimony from Glenda Matsushima, in opposition, who resides at 5920 Kawaihau Road, directly across from the proposed distillery. Ms. Matsushima stated she was born and raised here, and has two children. She expressed concern that this distillery could be devastating to their health, and feels it is not the area for the distillery to be. She noted there are so many other more open spaces, noting how small the applicant's property is, and how close all the houses are to it. She was alarmed to hear that a manufacturing plant/distillery was being proposed in such a small area, and is definitely opposed to it for both health reasons and the environmental impact.</p> <p>Commissioner Matsunaga asked Ms. Matsushima if she had signed the petition and whether she is within the 500' radius, to which she replied yes, pointing out where her property is located directly across the applicant's property. She stated she has been home when they harvested coffee, and has seen the dust. She noted that she does not own the property, but has been renting there for over 7 years; the owner was made aware of the application and is also opposed.</p> <p>From the audience, Mr. Gale asked to clarify that a person who is part of a corporate entity is not responsible for his actions to which Attorney Trask</p>	
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	<p>replied he would not be giving him legal advice today, but that Mr. Gale was free to seek his own legal counsel.</p> <p>The Commission received testimony from Gigi Drent, in support. Ms. Drent, who is the wife of the applicant, stated they are not mainlanders with money with the intention of coming to Kauai to start a corporation. She moved here to teach at Kauai Community College, and her husband previously wrote journals to promote the Kona Coffee industry on the Big Island prior to moving here. She commented that they worked hard to get their farm, and would like to see Kauai grow in the area of farming. She is very offended by some of the comments, and noted that some of the concerns are coming from misunderstandings, which she will let Tai Erum Operations Manager, address during his discussion with the Commission. Ms. Drent explained that she teaches both children and adults at Kauai. She is currently working on creating a program at Kapaa High School to educate the youth about agriculture, help create a path for them to go to UH Mānoa, and encourage them to help grow the Agriculture industry. She stated that she and her husband are responsible citizens who wants to see the community grow. When they put all of their money into this agricultural property, the intent was to bring growth to the island, to pave the way for the children to see agriculture as a viable option. What they are asking for is to do value-added agriculture to enable them to make a living from agriculture. She stated that if the Commission denies the application, she feels it would set a very bad example.</p> <p>Commissioner Matsunaga asked whether Ms. Drent understands that if the petition is deemed valid, and is signed by more than 50% of property owners within the 500' radius, it takes the decision-making out of the Commission's hands, and would have to be denied. Ms. Drent stated that she does understand the rules. Commissioner Matsunaga pointed out that this hearing has been continued from a month ago in the hopes that the applicant would meet with the residents to address their concerns, and come</p>	
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	<p>to some sort of understanding; apparently, that did not happen. Ms. Drent stated she would let Mr. Erum speak to that at the appropriate time.</p> <p>The Commission received testimony from Lawrence Werner, in support. Mr. Werner is the contractor that will be constructing the building for the applicant. He understands that the lot the applicant is on is Ag zoned, and asked whether all the surrounding lots have the same zoning designation. He questions how agricultural land gets stuck in between residential lots. Attorney Trask stated it is not uncommon, but reminded Mr. Werner of his time limit. Mr. Werner stated he has done a lot of building on Agriculture land, and very few people have been growing anything that is a viable agricultural product. It seems a bit crazy that someone growing coffee and tobacco, and wants to use the land for its exact purpose as determined by the County has so much opposition. He understands that people have health issues, but it is Agricultural land, and he questioned whether the people on the surrounding lots are involved in Agriculture at all. He questioned whether the rules for Les Drent are the same for everyone else in the neighborhood. Mr. Werner referenced some concern brought up about the warehouse building itself, explaining that they have already received the permits for it, and questioned whether the construction of the building is contingent upon this application getting approved. He stated that it seems like the building is going to be built anyway because the permits have already been issue, and noted that if the concern is about the building being there, it will be there anyway. Mr. Werner stated he is aware of other distilleries and has not heard near the kind of horror stories he is hearing here.</p> <p>The Commission received testimony from David Sable in support. Mr. Sable stated he has no financial interest, and has never been involved in any of Mr. Drent's businesses. He has owned a house next door to him at 6202A Kawaihau Road for 9 years. He understands the concerns of the neighbors, but noted that many of the comments made at both the previous</p>	
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hearing as well as the current hearing seem to imply that Mr. Drent is not concerned about his neighbors, or their health. Aside from raising coffee from their current location next to his property, Mr. Sable explained that the Drent's also produce honey and have various fruit trees that they put to use, noting they have always meticulously maintained their land and their buildings. He is not aware of any noise or pollution issues, and their farm is certified organic. Mr. Sable stated he has no concerns about toxic chemicals related to their operations, and there has never been any dust or dirt issues at that location related to their operations. He explained that the Drent's also have two young children, and are extremely concerned about their own children. Mr. Sable has sampled the products, and toured the facilities, noting that they are of high quality, and Mr. Drent is proud to promote the fact that they are made on Kauai; the goal of the distillery is to produce a whiskey that can carry the Made In Kauai designation. Mr. Sable stated Mr. Drent is a hard-working, small-business owner and entrepreneur who exemplifies the type of business owner that the State of Hawaii, and County of Kauai are trying to promote in recent years. He stated that sales of his products bring in revenue for the County and State, and put a good face on Kauai for the many visitors to the island as well. Mr. Sable stated he has no reason to think Mr. Drent's proposed project will be handled any less carefully or safely than his current business, and feels he will be a good neighbor to those around him. Mr. Sable added that when Mr. Drent embarks on a new or different enterprise, he does extreme research to ensure it is done properly and safely.

The Commission received testimony from Joan Sable, in support, who resides at 6202 Kawaihau Road Unit A. She stated that Mr. Drent has been a very community-minded citizen having sponsored and coached soccer for years, and has supported other farming operations as well as being a member of the Farm Bureau. His children attend Hawaiian schools, and he is a responsible neighbor that researches everything thoroughly, and maintains the highest standards of safety, environmental concerns, and

	<p>purity. She feels this distillery will be top-notch. She commented that there have never been any odors emanating from the coffee farm except for the slight aroma of roasting coffee, which she finds pleasant. Ms. Sable stated there was a lot of conjecture in the comments she heard today concerning the size of the operation, and referring to it as a factory. Ms. Sable stated that is not the case, and has never been the case on the property he has next door to them; that should not be a fear. She also pointed out some inaccuracies in the testimony, noting that the minutes of the November 2 hearing reflect Mr. Erum's explanation of the proposed operation, which explains the closed process that will collect and reuse any volatiles; anything needing disposal will be done so properly. She explained it is an electric system that will not generate any fumes or smoke, and the concern about air pollution is unfounded.</p> <p>Tai Erum, General Manager, thanked the Commission for granting the continuance, and allowing them time to speak with the community. He explained that after the last hearing on November 2, he was able to obtain some phone numbers of the residents, but aside from that, they were only left with home addresses. The first thing they did was to send out the letter (on file) which addressed much of the concerns brought up at the initial hearing. After that, Mr. Erum attempted to contact those he had telephone numbers for, which was limited to Matthew Santos, Sissy Morgan, and Linda Driscoll. Ms. Driscoll offered to be a bridge between the applicant and the community, and is who Mr. Erum spoke with the most. Ms. Driscoll provided a list of questions which they went over one by one over the phone. During a later conversation Mr. Erum requested the phone numbers for some of the other neighbors so he could contact them, and pointed out that the letter they sent does have a contact phone, which would have allowed the residents to call them to discuss any concerns. Mr. Erum stated he was told by Ms. Driscoll that the neighbors were unwilling to</p>	<p>The meeting recessed at 5:01 p.m.</p> <p>The meeting resumed at 5:06 p.m.</p>
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	<p> speak with or meet with him, and only wanted to see Mr. Drent at today's hearing. Mr. Erum stated several efforts were made to meet with the neighbors, but they were unable to do so; Mr. Erum states he did not receive the text message Ms. Morgan said she sent, and was unable to reach her by telephone though he did leave her messages. He stated that Ms. Driscoll and Mr. Santos were the only ones he actually spoke to; he had hoped the letter had satisfied many of their concerns.</p> <p>Mr. Erum stated many of the complaints brought up were not directly related to the distilling efforts, but more about the building, which is going to be constructed whether or not they are approved for the distillery, and will support their other agricultural efforts such as coffee roasting and chocolate. There were also concerns about bees, but there are no plans to keep bees; many of the concerns seem to be veering off-topic and not directly related to the distillery. Mr. Erum acknowledged that there is a smell produced when they roast coffee, but pointed out that the smell from the distilling they will be doing can almost go unnoticed; there will be no smoke produced. Any smoke being emitted from the building will be due to their coffee roasting, and not the distilling. Though he tried to address the concerns brought to him by the community members, Mr. Erum stated they were unable to have an actual meeting, noting that it seemed the neighbors were unwilling to do so unless it was with the owner Les Drent.</p> <p>Commissioner Endo asked where Mr. Drent was today to which Mr. Erum replied that he is coaching his son, who is playing hockey on the East coast this winter.</p> <p>Commissioner Matsunaga asked how far along the applicant is with the Planning Department on resolving their pending issues. Mr. Delaplane explained that various permits from different departments are required for this entire project, and the liquor license is just one component of it. He further explained that they have already been issued a permit for the general</p>	
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warehouse, and for the Agriculture processing that would include the distilling. The permits they currently hold allow for distilling as it is considered agricultural processing by taking corn, mashing it, and distilling it into alcohol. However, those permits are currently on hold pending some other issues that arose with the Building division, some of which have been rectified, but a couple of which have not. They are currently awaiting approval of their wastewater plan, which includes the installation of a wastewater treatment plant that comply with County and State codes, which they are nearly finished with. Mr. Delaplane pointed out that the exact same system being installed in their distillery has been approved at other locations, and do not expect any issues with that. They have received their ATB license from the Federal government to operate on that property, which involved a fairly extensive process to obtain; a copy of that license has been sent to the Liquor Control Director.

Mr. Delaplane stated he would have an issue with the Commission considering these aspects as part of its decision on whether or not to approve a liquor license, but he can provide an update on the declaratory action. He explained the declaratory action is solely related to whether retail sales are allowed on the property to determine if a visitor should stop by the distillery to check things out, would they would be allowed to purchase some cigars, or whiskey at the counter? Mr. Delanplane noted that there is a State law that says any land zoned Agricultural is allowed to sell value-added products on the property if the products are Hawaii grown, or Hawaii value-added products; this is a State law passed in 2013. Mr. Delaplane explained that the Kauai County Code predates that, and was not updated after the State law was updated in 2013. The basis of their declaratory judgement is that the law changed regarding retail sales of Hawaii grown value-added products on Agricultural land, which is currently allowed under State law, but was not updated under the Kauai County Code. Mr. Delaplane stated that they did discuss it with the County, who he says informed them there was nothing stating that in the books, and that the

	<p>applicant would need to apply for a use permit, which would require a public hearing. The applicant did not wish to do that as they felt there was no reason to go through the public hearing process for a use permit they felt they were entitled to under State law. They do not have a hearing date yet, but they are filing a motion for summary judgment that they are hoping to receive in the next couple of months.</p> <p>Commissioner Endo reminded the applicant's representative that at the last hearing, at which time the continuance was granted, the Commission suggested that the applicant have a meeting with the neighboring residents. He acknowledged what Mr. Erum explained regarding his attempts to do so, as well as the residents desire to meet with the owner, Les Drent. What he is hearing is that all the neighbors received was a letter from Mr. Drent, and nothing more since he is currently on the East coast. Commissioner Endo stated that what he has heard from those in support of the application is that Mr. Drent is very community-minded, and is aware of what the issues are, yet he will still not meet with the neighbors. Commissioner Endo feels if one is thinking of their neighbors, and is very community minded, they would want to make the effort to come back here, do what needs to be done, and meet with the neighbors to address all of their concerns to try and work things out rather than coaching sports. He stated his disappointment that after the opposition expressed at the first hearing on November 2, Mr. Drent has not met with the neighbors though he was given the opportunity, via the continuance, to do so. Commissioner Endo stated he sees where Mr. Erum made an effort, but he still feels the owner, not the manager should be having the discussion with neighbors as he owns the property and the LLC.</p> <p>Mr. Erum stated he appreciates that point of view, noting that the Commission's suggestions were taken into consideration when attempting to organize a meeting with the neighbors, which did not happen because Mr. Drent was not going to be available as the neighbors requested. Mr. Erum pointed out the he and the other employees are going to be the face of the</p>	
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operation, noting Mr. Drent will not be living on that property, and will maintain his residence about 2 miles up the road. The neighbors that were contacted are the neighbors that Mr. Erum will be seeing on a day to day basis for the entirety of his career, which is why he was the one trying to extend the olive branch to the community. He added that even if Mr. Drent were there, he would have had Mr. Erum take the lead since he would be the one running the operation on a day to day basis. Mr. Erum feels it is unfortunate that Mr. Drent's absence at the meeting was such a big issue because he feels he along with the employee's, as well as Mr. Drent's spouse could have painted a very nice picture of what the community could expect from the operation.

Mr. Delaplane respectfully stated that he agrees it is good to be able to answer for something one is responsible for, and communication is the best foot to put forward. However, he disagrees with the opinion that Mr. Drent should be present himself, noting that the previous applicant, RCSH Operations, Inc. dba Ruth's Chris Steak House had an attorney present to represent them, not the owners themselves, and the license was granted. Mr. Delaplane stated that is what he would expect in a typical, run-of-the-mill situation, noting he is very familiar with what the Commission does, and respects and appreciates the great community service they provide. He speculated that had there been any protests to Ruth's Chris Steak House, he does not think the Commission would have expected the owner of RCSH Operations, Inc. to come to sit before the Commission to answer questions from the community about what the particulars of the operation were going to be. Mr. Delaplane added that he is not saying that LBD Coffee, LLC is anywhere near as big as RCSH Operations, Inc., and explained the model Mr. Drent is using to run his business, which is to allow some young folks on Kauai to run the day to day operations of his business, which includes agriculture in many different forms such as growing and roasting coffee, cigar production, and hopefully distilling; Mr. Drent is the visionary in how the business is proceeding. Mr. Delaplane stated that the fact that the

	<p>community members in protest demanding that Les Drent be at the table is unreasonable. Given the business model and testimony provided by Mr. Erum at the last hearing, it is clear that Mr. Erum is the one who will be the operations manager running things. When questions come up regarding noise, etc. Les Drent will not be in charge, Tai Erum will be, and questioned whether the community would rather speak to the manager in charge and present on the property, or to the visionary head of the business who will not physically be there. Mr. Delaplane feels the fact that Mr. Drent chose not to be present today, and is instead on the East coast coaching his son is how he has chosen to run his business, just as the owner of Ruth's Chris Steak House did not choose to be present, and just as the owners of many other large businesses don't come to deal with minutia. He stated he is not trying to downplay it, but noted this is one aspect of a business that is much larger, and will require other permits, He feels it is absolutely appropriate that Mr. Erum is the one present today, and feels it would have been appropriate for the community members to speak with the people who will be on the ground doing things. Mr. Delaplane noted the fact that instead of having that conversation and trying to figure out what the operation will actually be, and get answers to their questions it seems the continuance was just used by the opposition to garner more opposition rather than to have a conversation about it and address some of the concerns. He noted the refusal came from the opposition's side, not from the applicants. He added that Mr. Drent is available and willing to talk to anyone, and to come to the table, though Mr. Delaplane feels asking him to come back here from the East coast for this is a bit of a stretch; however, if the Commission's decision today is based upon hearing from Mr. Drent himself, he would be willing to do so. Mr. Delaplane feels that the fact that Mr. Drent did not come back for this hearing should not be held against him, just as it should not be held against any other business owner who applies for a liquor license.</p>	
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Vice Chair Gibson stated on behalf of the Commission, that they have seen cases like this in the past on applications that have had strong opposition, and that have worked out beautifully when the protesters were able to talk with the people responsible for the business. The Commission had hoped the continuance would have been an opportunity for the applicant to sell the community on the points brought before the Commission today. Mr. Erum did present these points at the previous hearing, but Vice Chair Gibson feels the community may have wanted more. The Commission is now left with the HRS 281-59 ruling regarding majority protest.

Mr. Delaplane addressed the HRS 281-59 ruling, stating he had an opportunity to review the petition map and signatures submitted by Mr. Driscoll. He noted verifying signatures on a petition is an art, and involves a process it has to go through. He takes issue with the heading appearing at the top of the petition which reads: *Please sign the petition below signifying you object to a distillery, and liquor sales/consumption in your residential/agricultural neighborhood.* Mr. Delaplane asked that this petition not be considered valid as it relates to this liquor license application as it does not reference the specific address of the distillery, and the map provided is not labeled. The petition's header also includes things not directly related to the liquor license application, and to consider this a valid petition would be an error on the Commission's part. He noted the petition is very vague in and of itself, and does not think it would garner a need for follow up on whether the signatures are valid as the petition itself does not reference the liquor license application. Another issue Mr. Delaplane has with the petition is that the names listed in 84 through 89 were all added today by the same person, and do not include actual signatures. Additionally, there was some question on how the 500' radius is determined whether by property, or by the actual premise being licensed. Mr. Delaplane pointed out that the premises is set very far back, and takes up a miniscule part of the property, noting that the measurements they took in determining the radius is from the actual premises itself. Based on those

	<p>two issues, Mr. Delaplane asked that this petition not be considered under HRS 281-59.</p> <p>Mr. Erum added that they found out about the petition, and made it known to the Liquor Control Director, that it was via a Facebook post that laid out the tactics on how signatures were obtained. The gentleman who posted was approached to sign the petition even though he is outside the radius, and he was approached by the Driscoll's after the informational letter was sent out to the resident's by the applicant. Mr. Erum stated that false information was used in order to gain petition signatures. The Facebook post states that the property isn't zoned for this type of activity, and that an elderly couple told him the applicant was suing the County, which seems to be the same information many of the protesters received. This is misinformation that is being used against the applicant, and seems that the community thinks they are suing the County to get this application approved. However, as Deputy County Attorney Mauna Kea Trask explained earlier, that declaratory action has nothing to do with this liquor license application. Mr. Erum stated even though information was sent out to the community, it was ignored, and misinformation was still shared in order to obtain signatures through influence. Mr. Erum added that he has had several good conversations with Ms. Driscoll, and has made several efforts to try and communicate with the neighbors, which he hopes will be taken into consideration.</p> <p>Mr. Delaplane concluded by stating much of the protests come down to the neighbors not wanting to change their neighborhood as they feel it is something industrial moving into a residential area, and is going beyond agriculture. He firmly asserted that the operations they are seeking approval for are agricultural in nature, noting the distilling aspect of it has already been cleared with the Planning Department as agricultural processing. He further stated that Section 165-4 of the Hawaii Revised Statutes, the Right To Farm Act, states: <i>No court official, public servant, or public employee</i></p>	
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	<p><i>shall declare any farming operation a nuisance for any reason if the farming operation is being conducted in a manner consistent with generally accepted agricultural and management practices. There shall be a rebuttable presumption that a farming operation does not constitute a nuisance.</i> Mr. Delaplane reiterated that this company will be farming, which is an agricultural operation, and are not looking to steamroll anyone. They attempted to have a conversation about it, and are not trying to give the impression that they feel they can do whatever they want. The applicant is trying to conduct business in a responsible way, yet they have been met with opposition.</p> <p>Mr. Delaplane stated that the Federal government has already issued them a license, they have done everything required for that process and have been granted a license. Part of the requirement to obtain an ATB license is to show that your operation is going to be consistent with general agricultural management practices as they relate to distilling, which they have done. Based on the testimony received, and under State law, he does not feel this operation will be a nuisance to the community; on Agricultural land, one has the right to farm as long as they are doing it in a responsible way, consistent with general practices.</p> <p>The public hearing on Application 2018-027 was closed.</p>	
Approval of the Minutes	<p><u>APPROVAL OF MEETING MINUTES:</u></p> <p>a) Open Session minutes of November 16, 2017</p>	<p>Mr. Matsunaga moved that Application No. 2018-027 be taken under advisement pending the verification of the validity of the petition submitted, and consultation with Commission's counsel. Mr. Pacheco seconded the motion. Motion carried 4:0.</p>

	<ul style="list-style-type: none"> b) Executive Session minutes of November 2, 2017 c) Executive Session minutes of November 16, 2017 	Mr. Endo moved to approve the open session minutes of November 16, 2017, and the Executive Session minutes of November 2 & November 16, 2017. Mr. Pacheco seconded the motion. Motion carried 4:0.
1.	<p><u>DIRECTOR'S REPORT:</u></p> <ul style="list-style-type: none"> a) <u>INVESTIGATORS' REPORTS</u> b) <u>INCOMING COMMUNICATIONS:</u> <ul style="list-style-type: none"> (1) From Avid Marketing Group (2) From MHW, Ltd. (3) From LBD Coffee, LLC (4) Disturbance Reports from Nāwiliwili Tavern, and St. Regis Princeville Resort c) <u>OUTGOING COMMUNICATIONS:</u> <ul style="list-style-type: none"> (1) To Avid Marketing Group (2) To MHW, Ltd. d) <u>EMPLOYEES IN LICENSED PREMISES:</u> Managers and Assistant Managers – See Attachment e) <u>ACTIONS OF THE DIRECTOR:</u> <ul style="list-style-type: none"> (1) BEACH HOUSE RESTAURANT (2) THE CLUB AT KUKUI‘ULA (3) DUKE’S CANOE CLUB (4) FOODLAND PRINCEVILLE (5) KAUAI MARRIOTT RESORT (6) MERRIMAN’S (7) PRINCEVILLE WINE MARKET 	

	<p>(8) ROB'S GOOD TIMES GRILL (9) THE WINE GARDEN (10) THE WINE SHOP (11) WRANGLER'S STEAKHOUSE (12) PRINCESS CRUISE LINES, LTD. (13) HOLLAND AMERICA LINE N.V (14) NATIONAL TROPICAL BOTANICAL GARDEN (15) WEST KAUAI BUSINESS AND PROFESSIONALS ASSOCIATION (16) ROTARY CLUB OF HANALEI BAY FOUNDATION</p> <p>f) <u>INFORMATIONAL MATTERS:</u></p>	<p>Mr. Pacheco moved to accept Items 1(a) through 1(f). Mr. Matsunaga seconded the motion. Motion carried 4:0.</p>
2.	<p><u>VIOLATION REPORT:</u></p> <p><u>THE MARKET:</u> Violation of Rule 10.2(a) Manager on Duty, qualifications.</p>	<p>Mr. Endo moved to call the licensee for Violation Hearing. Mr. Pacheco seconded the motion. Motion carried 4:0.</p>
3.	<p><u>CHANGE IN CORPORATE OFFICERS:</u></p> <p><u>RY-10, INC. dba EATING HOUSE 1849:</u> Addition of Michael John Webber as President.</p>	<p>Mr. Pacheco moved to accept the change in corporate officers. Mr. Endo seconded the motion. Motion carried 4:0.</p>
4.	<p><u>TRANSFER OF LICENSE IN LESS THAN ONE YEAR:</u></p> <p><u>EL AZTECA:</u> Request permission to transfer Restaurant General License No. 2G-064 issued to Cloroshko LLC dba El Azteca in less than one year from its issuance on July 7, 2017.</p>	<p>Mr. Endo moved to approve the request for transfer of license in less than one year. Mr. Matsunaga seconded the motion. Motion carried 4:0.</p>
Announcements	<p>Next Scheduled Meeting: Thursday, December 21, 2017 – 4:00 pm, Mo'ikeha Building, Meeting Room #3.</p>	

Adjournment		Vice Chair Gibson adjourned the meeting at 5:45 p.m.

Submitted by: _____
Cherisse Zaima, Private Secretary

Reviewed and Approved by: _____
William Gibson, Vice Chair